

LAWRENCE A. ORGAN (SBN 175503)
larry@civilrightsca.com
NAVRUZ AVLONI (SBN 279556)
navruz@civilrightsca.com
CIMONE A. NUNLEY (SBN 326915)
cimone@civilrightsca.com
CALIFORNIA CIVIL RIGHTS LAW GROUP
332 San Anselmo Avenue
San Anselmo, California 94960
Telephone: (415) 453-7352
Facsimile: (415) 785-7352

J. Bernard Alexander (SBN 128307)
balexander@amflp.com
ALEXANDER MORRISON + FEHR LLP
1900 Avenue of the Stars, Suite 900
Los Angeles, California 90067
Telephone: (310) 394-0888
Facsimile: (310) 394-0811

Attorneys for Plaintiffs,
DEMETRIC DI-AZ and OWEN DIAZ

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DEMETRIC DI-AZ, OWEN DIAZ, and
LAMAR PATTERSON,

Plaintiffs,

v.

TESLA, INC. dba TESLA MOTORS, INC.;
CITISTAFF SOLUTIONS, INC.; WEST
VALLEY STAFFING GROUP;
CHARTWELL STAFFING SERVICES, INC.;
and DOES 1-50, inclusive,

Defendants.

Case No. 3:17-cv-06748-WHO

**PLAINTIFF'S RESPONSE TO
DEFENDANT TESLA, INC.'S
OBJECTIONS AND
COUNTERDESIGNATIONS TO
PLAINTIFF'S REVISED DESIGNATION
OF DEPOSITION TESTIMONY OF
DEMETRIC DIAZ**

Trial Date: September 24, 2021
Complaint filed: October 16, 2017

Plaintiff Owen Diaz provides the following response to Tesla's objections and counter designations to Plaintiff Owen Diaz's Revised Designation Testimony of Demetric Di-az (Dkt. No. 256). Plaintiff notes he is withdrawing his designations nos. 6, 10, 11 to save the Court

review time.

Di-Az, Demetric 5/15/18, Volume 1

#	Lines	Deposition Excerpt	Objection / Counterdesignation	Plaintiff's Response
1	10:4-22 (38 secs)	<p>4 Q. Could you please state your full name for the</p> <p>5 record.</p> <p>6 A. Demetric Jean Di-az.</p> <p>7 Q. Did you say Jean?</p> <p>8 A. Yes. That's my middle name.</p> <p>9 Q. Okay. And how do you spell your last name?</p> <p>10 A. D-I hyphen A-Z.</p> <p>11 Q. And is your father's name Owen Diaz?</p> <p>12 A. Yes.</p> <p>13 Q. And he spells his name with a D-I-A-Z without a</p> <p>14 hyphen; right?</p> <p>15 A. Yes.</p> <p>16 Q. And why do you spell your name with a hyphen?</p> <p>17 A. As a kid it was given to me like that through</p> <p>18 birth. I really don't know why it was like that.</p> <p>19 Q. You don't have an understanding of why your last</p> <p>20 name is spelled with a hyphen?</p> <p>21 A. I was told that was the original spelling. That</p> <p>22 was it.</p>		
2	31:20-22 (3 sec)	<p>20 Q. How would you describe your relationship with</p> <p>21 your father?</p> <p>22 A. My relationship with my father was good.</p>		

#	Lines	Deposition Excerpt	Objection / Counterdesignation	Plaintiff's Response
3	40:14-16 (8 sec)	14 Q. So you received a high school diploma from 15 Pittsburg's adult school in June of 2014? 16 A. Yes.		
4	109:2-3 (2 sec)	2 Q. How many days a week did you work? 3 A. Five.		
5	107:9-19 (43 sec)	12 Q. And who told you you would be reporting into 13 Javier Caballero? 14 A. He told me after because I started asking 15 around, like, "Hey, who do I" -- and he was, like, "Oh, 16 well, you have to report to me now. You don't report to 17 the day shift anymore." And I was, like, "Okay." 18 Q. So Javier Caballero told you that you would be 19 reporting to him? 20 A. Yes.		
6	119:18-21 (08 Sec)	18 Q. Why didn't you get along with Javier prior to 19 this incident? 20 A. Javier was harassing me and calling me a nigger 21 every day; so, no, I didn't get along with him.	Objection. Testimony was excluded by Court Order on Tesla's Motions <i>In Limine</i> (Dkt. No. 207), p. 6, limiting Demetric's testimony to only the alleged incident in which Owen Diaz allegedly witnessed, stating, discussing that alleged incident and ruling "I will allow Demetric to testify to the events and complaints about	Plaintiff withdraws this designation.

#	Lines	Deposition Excerpt	Objection / Counterdesignation	Plaintiff's Response
			which [Owen] Diaz was aware." This testimony about other incidents where Owen Diaz was not present must be excluded per the Court's ruling.	
7	150:15-151:20 (2 min, 45 sec)	<p>15 Q. In paragraph 14 you state "In approximately 16 August of 2015, Demetric's father, Owen, informed him 17 West Valley had openings for positions at the Tesla 18 factory." 19 Did your father tell you that West Valley had 20 openings? 21 A. Yes. 22 Q. Did your father encourage you to apply? 23 A. Yes. 24 Q. What did your father tell you about what it was 25 like to work at Tesla? 26 151 27 1 A. He told me it was going to be a good experience 28 2 and that it would be -- like, it would be good. I 3 bought into it because I thought it was going to be the 4 ultimate experience. Like, oh, I get to work for Tesla. 5 They're making modern productions to build</p>	<p>Counterdesignation - Rule of completeness, FRE 106. 62:13-14. 16-17</p> <p>13 MS. ANTONUCCI: Do you have any reason to 14 believe that West Valley was not your employer? 16 THE WITNESS: No, I don't have any reason to 17 believe that they were not my employer.</p>	<p>Objection to Tesla's counterdesignation. 1. Improper counterdesignation as it is not related to Plaintiff's actual designation. 2. Rule of completeness, FRE 106, 62:8-12, 62:15. 3. Calls for legal conclusion. 4. Irrelevant: Demetric Di-az's understanding of his relationship West Valley is not relevant to any claims or defenses in this case. 5. FRE 403: the counterdesignations are prejudicial and likely to lead to confusion of issues.</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation	Plaintiff's Response
		<p>electrical</p> <p>6 cars to make the world a better place. Like, why</p> <p>7 wouldn't I want to be a part of that?</p> <p>8 Q. Your father told you it was going to be a good</p> <p>9 experience to work at Tesla?</p> <p>10 A. Yeah. He told me it would be a good experience</p> <p>11 and it was going to be good for me.</p> <p>12 Q. And that was right before you applied in August</p> <p>13 of 2015?</p> <p>14 A. Yes.</p> <p>15 Q. Did your father tell you around the time you</p> <p>16 applied in August 2015 anything about what his work</p> <p>17 experience was like at Tesla?</p> <p>18 A. When I was applying there, he said that his work</p> <p>19 experience was going okay. From what I could tell, it</p> <p>20 was going good.</p>		
8	159:24-160:14 (54 sec)	<p>24 Q. And who stated this phrase?</p> <p>25 A. Javier. I think his last name is</p> <p>26 Caballero.</p> <p>27 160</p> <p>28 1 You said his name.</p> <p>2 Q. Javier Caballero said this, quote,</p> <p>"All you</p>	<p>Counterdesignations. Rule of completeness, FRE 106.</p> <p>160:15-20-161:8</p> <p>15 Q. And how many other people besides you and T.J.</p> <p>16 were present?</p> <p>17 A. Me, T.J., my father, and the rest of</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation	Plaintiff's Response
1				
2		3 fucking niggers -- I can't	my team	
3		stand you	18 that was getting	
4		motherfuckers''?	ready to leave.	
5		4 A. Yes.	19 Q. It was directed	
6		5 Q. And in paragraph 19	at your whole team?	
7		you say that	20 A. Yes.	
8		it was your	21 Q. Sorry. Did you	
9		6 shift lead?	tell me how many	
10		7 A. It's my shift supervisor.	people are on	
11		8 Q. So it wasn't your shift	22 your team?	
12		lead?	23 A. I think I told	
13		9 A. No. That's probably a	you earlier.	
14		mistake.	24 Q. Can you tell me	
15		10 Q. Where was this	again?	
16		statement said?	25 A. I think	
17		11 A. Right on the	approximately about	
18		production floor.	six.	
19		12 Q. Where on the	p. 161	
20		production floor?	1 Q. Any people on	
21		13 A. Within zone 1 and	your team not	
22		getting ready to	African-American?	
23		walk out of	2 A. Yes.	
24		14 our section.	3 Q. Who?	
25			4 A. I think it was	
26			probably about, like,	
27			three other	
28			5 guys that weren't	
			African-American.	
			6 Q. Any other	
			people on your team	
			African-American?	
			7 A. Me, T.J., and	
			one other guy. I don't	
			remember	
			8 his name.	
			162:2-10	
			2 A. From there I	
			went to his immediate	
			-- to	
			3 Javier's supervisor.	
			They did nothing	
			about it. And	
			4 then from there, I	
			went to HR, and they	
			did nothing	
			5 about it.	

#	Lines	Deposition Excerpt	Objection / Counterdesignation	Plaintiff's Response
			6 Q. Who in HR did you complain to? 7 A. I don't remember the lady's name. 8 Q. And who was Javier's supervisor? 9 A. It was another male. I don't remember his name 10 either. 162:13-21 13 Q. Did you ever put anything in writing? 14 A. No. 15 Q. You never complained in writing? 16 A. No. I just went and verbally complained. It 17 never went anywhere. 18 Q. You never sent a text? 19 A. No. 20 Q. You never wrote an e-mail? 21 A. No. 163:22-24 22 Q. Did you follow back up with her to see if 23 anything had happened? 24 A. No.	
9	165:24-166:3	24 Q. Do you know whether your father heard it? 25 A. My father told me that he did hear it, and 166 1 that's the first time I seen my father, like, really	Counterdesignations. Rule of completeness, FRE 106. 166:6-7, 166:25-167:4 6 Q. Have you ever used the word? 7 A. Yes. 25 Q. Can you give me an example of	Objection to Tesla's counterdesignation. 1. Improper counterdesignation as it is not related to Plaintiff's actual designation. 2. Irrelevant: Demetric Di-az's

#	Lines	Deposition Excerpt	Objection / Counterdesignation	Plaintiff's Response
		<p>2 feel like he couldn't do anything for me. Like, he 3 didn't know what to do.</p>	<p>how you have used p. 167 1 the word in the past? 2 A. Like, in the past when I see one of my friends, 3 I might be like, "What's up, my nigga?" Like, that's 4 it.</p>	<p>use of the N-word outside the Tesla facility is irrelevant to any claims or defenses in this case. 3. FRE 403: the counterdesignations are prejudicial and likely to lead to confusion. There is no record that Demetric Di-az ever used the N-word in the workplace. Because the testimony does not specify where or when the N-word was used it will confuse the jury.</p>
10	185:24-186:3 Cut for length (16 sec)	<p>24 Q. So you mentioned that the first time that you 25 heard Javier say the N-word was two or three days after 186 1 working the night shift. He said, "All you N-words need 2 to hurry the F up"? 3 A. Yes.</p>	<p>Objection. Testimony was excluded by Court Order on Tesla's Motions <i>In Limine</i> (Dkt. No. 207), p. 6, limiting Demetric's testimony to only the alleged incident in which Owen Diaz allegedly witnessed, stating, discussing that alleged incident and ruling "I will allow Demetric to testify to the events and complaints about which [Owen] Diaz was aware." This testimony about other incidents where Owen Diaz was not present must be excluded per the</p>	<p>Plaintiff withdraws this designation.</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation	Plaintiff's Response
			Court's ruling.	
11	193:8-24 (1 min, 07 sec)	<p>8 Q. Do you know why it is that you're – that you 9 were terminated?</p> <p>10 A. No.</p> <p>11 Q. Do you know why you were issued a written 12 warning?</p> <p>13 A. No.</p> <p>14 Q. If you were to estimate how many times Javier 15 Caballero used the N-word at Tesla, how many?</p> <p>16 A. I would say more than 50.</p> <p>17 (Reporter clarification.)</p> <p>18 THE WITNESS: More than 50 but less than 60. So 19 in between there. I didn't work with him -- I just got 20 let go.</p> <p>21 Q. Are you alleging that every single day you 22 worked at Tesla Javier used the Nword?</p> <p>23 A. Pretty much every day after the third day that I 24 got there he used the N-word.</p>	<p>As to 193:8-13. Counterdesignations. Rule of completeness, FRE 106.</p> <p>193:2-7</p> <p>2 Q. Did you ever communicate with anyone about the 3 reasons that you were terminated?</p> <p>4 A. When I asked, I was just told my contract was 5 ended.</p> <p>6 Q. And that was with Samuel?</p> <p>7 A. Yes.</p> <p>145:7-17</p> <p>7 Q. Did he recommend that you talk to anybody else 8 about why your contract was ending?</p> <p>9 A. He just said give my rep a call and he should be 10 able to help me find another job. That was it. That 11 was all.</p> <p>12 Q. So you understood that you were eligible to be 13 hired in another job?</p> <p>14 A. From what I was told, I was eligible to be hired 15 for another job. That's what I was told.</p> <p>16 Q. By Samuel?</p> <p>17 A. Yes. That's what I was told.</p>	Plaintiff withdraws this designation.

#	Lines	Deposition Excerpt	Objection / Counterdesignation	Plaintiff's Response
			Objection as to 193:14-24. Testimony was excluded by Court Order on Tesla's Motions <i>In Limine</i> (Dkt. No. 207), p. 6, limiting Demetric's testimony to only the alleged incident in which Owen Diaz allegedly witnessed, stating, discussing that alleged incident and ruling "I will allow Demetric to testify to the events and complaints about which [Owen] Diaz was aware." This testimony about other incidents where Owen Diaz was not present must be excluded per the Court's ruling.	

CALIFORNIA CIVIL RIGHTS LAW GROUP
ALEXANDER MORRISON + FEHR LLP

DATED: September 27, 2021

By: /s/ Navruz Avloni
 Lawrence A. Organ, Esq.
 Navruz Avloni, Esq.
 Cimone A. Nunley, Esq.
 J. Bernard Alexander, Esq.
 Attorneys for Plaintiff OWEN DIAZ